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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 26, 2016

+ **FAO 145/2016 & C.M.11937/2016**

M/S. GURUKUL BOOKS & PACKAGING & ANR. ...Appellants

Through: Mr.Ashok Goel and Mr. Ranjeev
Kumar, Advocates

versus

M/S. EVERGREEN PUBLICATIONS (INDIA) & ANR.

.....Respondents

Through: Mr. Sushant Mahaptra and Mr.
Aruni Poddar, Advocates for
respondent No.1

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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In a suit for infringement of copyright relating to “*Examination Question Papers for ICSE Class-X Examinations*”, impugned order of 11th February, 2016 grants interim injunction restraining appellants-defendants from printing, publishing, offering for sale or otherwise directly or indirectly dealing with the examination question papers for ICSE Class-X Examinations.

The challenge to impugned order by learned counsel for appellants/defendants is on the ground that respondent No.2-*Indian School Certificate Examination* being an artificial person cannot be the author of the questions for the aforesaid examination. In support of the above submission, reliance was placed by appellants' counsel upon decisions in *R.G. Anand v. M/s. Delux Films*, (1978) 4 SCC 118, *The Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House*, 2011 (47) PTC 244 (Del.) (DB), *Bihar School Examination Board v. Suresh Prasad Sinha*, (2009) 8 SCC 483 and *Makers Development Services (P) Ltd. v. M. Visvesvaraya Industrial Research & Development Centre*, (2012) 1 SC 735.

During the course of hearing, appellants' counsel has urged that picking up of questions from respondents-plaintiffs publication was a fair use of the questions and amounts to review as permissible under Section 52 of the *Copyright Act, 1957*. To submit so, reliance is placed upon *Syndicate of the Press of The University of Cambridge on Behalf of the Chancellor, Masters and School v. B.D. Bhandari & Anr.*, 2011 (47) PTC 244 (Del.) (DB). It is submitted that the order in *Narendra Publishing House (supra)* has attained finality, but the question of law has been left open.

It is vehemently submitted by learned counsel for appellants that trial court in the impugned order has verbatim reproduced the submissions advanced by both the sides and has noted the case laws cited, but has summarily dealt with the application for interim injunction while relying upon a Division Bench's decision in *Narender Publishing House*

(*supra*) while noting that the aforesaid Division Bench order is *sub judice* before the Supreme Court. Thus, it is submitted that the impugned order does not disclose any application of mind and so, it deserves to be set aside.

Learned counsel for respondent No.1 fairly states that the impugned order has not dealt with the aforesaid submissions advanced by appellants perhaps for the reason that it may not be treated as an expression on merits of the case at trial. However, he submits that the conclusion in the impugned order is justifiable and the decisions relied upon by appellants' counsel are not applicable to the facts of the instant case.

Upon hearing and on perusal of impugned order and the decisions cited, I find that the only discussion in the impugned order is contained in the last two paragraphs (both are inadvertently numbered as 16). The operative portion of impugned order reads as under: -

“It is admitted fact that the order of Double Bench has been appealed, however, it is also admitted that there is no stay by the Hon’ble Supreme Court against that order. The SLP was filed in the year 2009, however, till date defendant failed to get any stay against that order of Hon’ble Division Bench of Hon’ble Delhi High Court. In absence of any stay from Hon’ble Supreme Court in SLP the order of Double Bench of Hon’ble High Court attained a finality and till date the same is in operation.

In view of my above discussion, I am of the opinion that plaintiff has prima facie established a case for interim injunction in his favour in view of aforementioned

observations and balance of convenience lies in the favour of the plaintiff and the plaintiff has shown the irreparable loss that is cause to him if the interim injunction is not granted. Consequently, the application under Order XXXIX Rule 1 and 2 CPC moved on behalf of plaintiff is allowed. Defendant no.1 and 2 by themselves, through their agents, servants, dealers, stockiest, representatives, sellers, distributors and all other persons acting on their behalf are restrained from printing, publishing, offering for sale, selling or otherwise dealing, directly or indirectly, in “Examination Question Papers for ICSE Class-X Examinations” conducted by defendant no.3 till the disposal of the suit.”

It is not in dispute that in the Division Bench’s decision in *Narendra Publishing House (supra)*, the challenge to the findings on the injunction was given up because respondent’s license for the period in question had expired. So, in the considered opinion of this Court, reliance placed upon Division Bench’s decision in *Narendra Publishing House (supra)* is of no avail as the Supreme Court in the Special Leave Petition against this decision has left the question of law open. The submission made by learned counsel for the appellants regarding existence of copyright in respect of the questions set for public examination, is an arguable point, which is required to be dealt with by trial court by passing a reasoned order afresh after hearing both the sides.

It has to be kept in mind that any observation made by the court while dealing with the interim injunction can never be treated an expression on merits of the case to prejudice either side and so, trial court is required to deal with the afore-noted submissions raised by appellants’

counsel and the case law relied upon.

In the afore-noted facts and circumstances of this case, impugned order is set aside with direction to trial court to decide respondent's application for interim injunction afresh within a period of three months from the date already fixed before it. The parties through their counsel shall appear before trial court on the date fixed to argue the application for interim injunction afresh. In view of Supreme Court's decision in *Bajaj Auto Limited v. TVS Motor Company Limited*, 2009 (41) PTC 398 (SC), it is deemed appropriate to direct appellants-defendants to maintain the accounts regarding the sale proceeds qua the publication of guide-*Solved ICSE Papers for Class-X Examination*, till the application for interim injunction is decided by trial court. The accounts shall be rendered by appellants/defendants on fortnightly basis.

This appeal and the application are accordingly disposed of while not commenting upon merits of this case.

Trial court record be remitted back forthwith.

(SUNIL GAUR)
JUDGE

SEPTEMBER 26, 2016

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